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CORPORATION  
7

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10  
11 KUNDE ENTERPRISES, INC.; VINTAGE  
WINE ESTATES, INC.,

12 Plaintiff,

13 v.

14 NATIONAL SURETY CORPORATION;  
CERTAIN UNDERWRITERS AT LLOYD'S  
LONDON; RSA INSURANCE GROUP;  
LIBERTY SPECIALTY MARKETS  
INSURANCE GROUP; NAVIGATORS  
UNDERWRITING AGENCY LIMITED;  
BRIT GLOBAL SPECIALTY; TRAVELERS  
MARINE CARGO,

15 Defendants.  
16  
17  
18  
19  
20  
21  
22

Case No. 3:19-cv-06636-SK

DEFENDANT NATIONAL SURETY  
CORPORATION'S MOTION TO DROP  
(DISMISS WITHOUT PREJUDICE) OR IN  
THE ALTERNATIVE SEVER PLAINTIFF  
VINTAGE WINE ESTATES, INC. AND  
DEFENDANTS CERTAIN UNDERWRITERS  
AT LLOYD'S LONDON, RSA INSURANCE  
GROUP, LIBERTY SPECIALTY MARKETS  
INSURANCE GROUP, NAVIGATORS  
UNDERWRITING AGENCY LIMITED, BRIT  
GLOBAL SPECIALTY AND TRAVELERS  
MARINE CARGO ON THE GROUNDS OF  
MISJOINDER

Fed. R. Civ. Pro Rules 20 and 21

Date: November 25, 2019

Time: 9:30 a.m.

Crtm: C

Judge: Magistrate Sallie Kim

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1           **I. INTRODUCTION**

2           This is an insurance coverage/bad faith action in which two separate unrelated winery-  
 3 policyholders have mis-joined together to sue their individual and unrelated insurers for property  
 4 claims arising out of the October 2017 wildfires in Sonoma. Plaintiff, Vintage Wine Estates, Inc.  
 5 (“VWE”) makes no claims and asserts no causes of action against Defendant, National Surety  
 6 Corporation (“Allianz”), nor could it. Allianz issued no policy of insurance to VWE and processed  
 7 none of its alleged fire damage claims. Rather, the claims brought against Allianz are asserted by its  
 8 insured, the lead plaintiff and policyholder, Kunde Enterprises, Inc. (“Kunde”). Because Allianz is  
 9 not and was not VWE’s insurance carrier, none of VWE’s claims arise out of the “same transaction,  
 10 occurrence, or series of transactions or occurrences,” permitting permissive joinder under Federal  
 11 Rule of Civil Procedure (sometimes, “FRCP”). Rule 20. Rule 20 simply does not permit joinder of  
 12 multiple defendants when the only connection among those defendants is that they have been  
 13 accused of the bad faith adjustment of fire claims. Accordingly, because plaintiffs cannot meet the  
 14 requirements for joinder under Rule 20, Allianz respectfully requests that the Court either “drop or  
 15 sever” VWE’s claims against the London Insurers pursuant to Rule 21.

16           Allianz also moves under Rule 21’s discretionary provisions for severance on the additional  
 17 grounds that the interests of justice mandate severing, including: (1) to prevent unfair prejudice; (2)  
 18 to provide a manageable trial; and (3) to avoid delay, and waste of time and judicial resources.  
 19 Allianz cannot receive a fair trial if this case is not severed. At minimum, a trial involving unrelated  
 20 fire claims inevitably will result in unfair bias and jury confusion. The substantial prejudice created  
 21 by Plaintiffs’ unfortunate misjoinder can only be addressed by immediate severance. Thus, the  
 22 instant lawsuit constitutes misjoinder ripe for dismissal without prejudice or in the alternative,  
 23 severance under FRCP Rule 21.

24           **II. ALLEGATIONS IN THE COMPLAINT**

25           In October 2017, a series of wildfires burned across Northern California, which affected  
 26 the Plaintiffs who owned wineries and conducted winemaking operations in the affected areas.

1 Dkt.# 1, Exh. A, Complaint ¶¶ 26, 28<sup>1</sup>. Plaintiffs contend that the wildfires exposed their wine  
 2 products to smoke which tainted the finished wine with a perceptible "smoke taint." *Id.*

3 Both Plaintiffs were insured by different insurers. Allianz insured Kunde under a real and  
 4 personal property policy, bearing number MZX80977326, for the policy period of April 1, 2017 to  
 5 April 1, 2018 (the "Allianz Policy"). The Policy provides blanket limits of coverage for real and  
 6 personal property at covered locations, including the insured's winery in Kenwood, California for  
 7 \$35,060,173.00, subject to a \$10,000 deductible, time element coverage with a limit of \$5,300,000.  
 8 *Id.* ¶ 15 and Exhibit 1.

9 On the other hand, VWE submitted insurance claims to the other Defendants, Certain  
 10 Underwriters at Lloyd's London, RSA Insurance Group, Liberty Specialty Markets Insurance  
 11 Group, Navigators Underwriting Agency Limited, Brit Global Specialty and Travelers Marine  
 12 Cargo (collectively, the "London Insurers"), which issued not a real and personal property policy  
 13 but a "marine stock throughput insurance policy," with unique market reference number  
 14 B1262SM0419217 and with limits of \$50,000,000 for the period October I, 2017 through October I,  
 15 2018 (the "Lloyd's Policy").<sup>2</sup> *Id.* ¶ 18 and Exhibit 2 to the complaint.

16 The complaint asserts generally that the wildfires resulted in significant insured losses,  
 17 which constituted:

18 a new substantial exposure for the insurance industry. Accordingly, insurers providing  
 19 "all-risk" coverage to California wineries subsequently responded to this increased  
 20 exposure by adopting an absolute exclusion for contamination to grapes, juice, and other  
 21 wine due to wildfires and related smoke taint. Importantly, neither the Allianz Policy nor  
 22 the Lloyds Policy, which were issued prior to the Wildfires, contains any such exclusion.  
 23 Yet Defendants wrongly refuse to honor their promise to insure Plaintiffs against this  
 24 risk.

25 Complaint, ¶ 30.

26 Plaintiffs further aver that as the result of Allianz' claims decisions, it "has unreasonably  
 27 deprived Kunde [but not VWE] of insurance benefits to which it is entitled . . ." *Id.* ¶40. On that  
 28 basis, Kunde (but not VWE) asserts causes of action for (1 ) Breach of Contract; (2) Declaratory

<sup>1</sup> The Complaint also attaches as exhibits, copies of the Kunde insurance policy as Exhibit 1 and the VWE insurance policy as Exhibit 2.

<sup>2</sup> However, the complaint does not explicitly allege that VWE is an insured under the Lloyd's Policy; and a review of the attached Lloyd's Policy at Exhibit 2 identifies the "Leslie G. Rudd Living Trust" as the named insured with other insureds including the Trust's subsidiaries, associated and/or affiliated companies, joint ventures, and/or partnerships.

1 Relief; and (3) Breach of the Implied Covenant of Good Faith and Fair Dealing against Allianz.  
 2 See, ¶¶ 59-72 (“Allianz has breached its obligations under the Allianz Policy by refusing to pay for  
 3 loss associated with Kunde's wine.” *Id.* ¶ 61; “An actual controversy presently exists between  
 4 Kunde and Allianz regarding Allianz' obligations to Kunde under the Allianz Policy.” *Id.* ¶ 64; and  
 5 “The Allianz Policy obligates Allianz to deal fairly and in good faith with Kunde in connection with  
 6 its claim for coverage.” *Id.* ¶ 68).

7 Similarly, Plaintiffs allege that the London Insurers (but not Allianz) have unreasonably  
 8 deprived VWE of insurance benefits to which it is entitled. *Id.* ¶ 54. On that basis, VWE (but not  
 9 Kunde) brings causes of action against the London Insurers for (1) Breach of Contract; (2)  
 10 Declaratory Relief; and (3) Breach of the Implied Covenant of Good Faith and Fair Dealing. See, ¶¶  
 11 73-86 (“The London Insurers have breached their obligations under the Lloyds Policy by refusing to  
 12 pay for loss associated with VWE's wine.” *Id.* ¶ 75; “An actual controversy presently exists  
 13 between VWE and the London Insurers regarding the obligations to VWE under the Lloyds Policy.”  
 14 *Id.* ¶ 78; and “The Lloyds Policy obligates the London Insurers to deal fairly and in good faith with  
 15 VWE in connection with its claim for coverage.” *Id.* ¶ 82).

16 Finally, as with their causes of action, Plaintiffs separately pray for individual relief. Kunde  
 17 prays for relief against Allianz with respect to causes of action one through three; and VWE prays  
 18 for relief against the London Insurers with respect to causes of action four through six. *Id.* pp. 16:1-  
 19 17:10.

### 20 III. LEGAL STANDARDS FOR MISJOINDER

21 The Federal Rules of Civil Procedure allow the joinder of multiple Plaintiffs and multiple  
 22 Defendants in the same action under Rule 20, but only if Plaintiffs meet certain pleading  
 23 requirements. Rule 20 reads, in part:

24 (a) **Persons Who May Join or Be Joined.**

25 (1) **Plaintiffs.** Persons may join in one action as Plaintiffs if:

26 (A) they assert any right to relief jointly, severally, or in the alternative with respect to or  
 27 arising out of the same transaction, occurrence, or series of transactions or occurrences;  
 and

28 (B) any question of law or fact common to all plaintiffs will arise in the action.

(2) **Defendants.** Persons-- . . .may be joined in one action as defendants if:

1                     (A) any right to relief is asserted against them jointly, severally, or in the alternative with  
 2 respect to or arising out of the same transaction, occurrence, or series of transactions or  
 3 occurrences; *and*

4                     (B) any question of law or fact common to all defendants will arise in the action.

5                     Federal Rule of Civil Procedure, Rule 20.

6                     Thus, as a threshold matter, Rule 20 (a) imposes two specific requirements for permissive  
 7 joinder of parties: (1) a right to relief must be asserted by, or against, each plaintiff or defendant  
 8 relating to or arising out of the same transaction or occurrence or series of transactions or  
 9 occurrences; and (2) some question of law or fact common to all parties must arise in the action.  
 10 “[W]hile multiple claims against a single party may be alleged in a single complaint, unrelated  
 11 claims against different defendants must be alleged in separate complaints.” *Hash v. Cate*, No. C  
 12 08-3729MMC(PR), 2009 WL 941807, at \*3 (N.D. Cal. Apr. 6, 2009). “As a practical matter, this  
 13 means that claims involving different parties cannot be joined together in one complaint if the facts  
 14 giving rise to the claims were not factually related in some way—that is, if there was not “similarity  
 15 in the factual background.” *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir.1997) (affirming  
 16 severance of plaintiffs seeking to compel the INS to rule on pending applications because general  
 17 allegations of delay did not create common transaction or occurrence).

18                     Should a court determine that the parties or claims are mis-joined, the court may at any time  
 19 on its own or by motion of a party “sever” any party’s claims or “drop” (that is, dismiss without  
 20 prejudice) all but the first named plaintiff so that the other plaintiffs may each pursue their own  
 21 lawsuits under Fed. R. Civ. P. 21; *Coughlin*, 130 F.3d at 1350 (all but the first named plaintiff may be  
 22 dismissed without prejudice to the institution of new, separate lawsuits). “As a general matter, Rule  
 23 severance creates two discrete, independent actions, which then proceed as separate suits for the  
 24 purpose of finality and appealability.” *Repro-Med Sys., Inc. v. EMED Techs. Corp.*, No.  
 25 213CV01957TLNCKD, 2019 WL 569277, at \*4 (E.D. Cal. Feb. 12, 2019).

26                     “Determination of a Rule 21 motion involves the sound discretion of the trial court.” *S.E.C.*  
 27 *v. Leslie*, Case No. 07-3444, 2010 WL 2991038, at \*4 (N.D. Cal. July 29, 2010). “The application  
 28 of Rule 21 involves considerations of convenience and fairness. It also presupposes basic conditions  
 of separability in law and logic. In determining a Rule 21 motion the court will consider: (1)

1 whether the claims arise out of the same transaction or occurrence; (2) whether the claims present  
 2 some common questions of law or fact; (3) whether settlement of the claims or judicial economy  
 3 would be facilitated; (4) whether prejudice would be avoided if severance were granted; and (5)  
 4 whether different witnesses and documentary proof are required for the separate claims.” *Trazo v.*  
 5 *Nestle USA, Inc.*, No. 5:12-CV-02272-PSG, 2013 WL 12214042, at \*2 (N.D. Cal. Dec. 4, 2013).

6 **IV. LEGAL ARGUMENT: SEVERANCE IS MANDATED HERE WHERE TWO  
 7 UNRELATED PLAINTIFFS IMPROPERLY JOIN IN A SINGLE LAWSUIT  
 AGAINST TWO UNRELATED SETS OF DEFENDANTS.**

8 **A. Plaintiffs’ Allegations Fail to Satisfy the First Prong of Rule 20(a) Because Their  
 9 Claims Arise Under Separate Policies with Different Policy Limits, for Claims  
 Which Occurred at Different Times at Different Locations and Were Adjusted  
 by Different Insurers..**

10 Plaintiffs fail to satisfy the first prong of Rule 20(a), which requires that the joinder of  
 11 parties arise out of the *same* transaction or occurrence. See, *League to Save Lake Tahoe v. Tahoe*  
*12 Regional Planning Agency*, 558 F.2d 914, 917 (9th Cir.1977)( “a right to relief must be asserted by,  
 13 or against, each plaintiff or defendant relating to or arising out of the *same* transaction or  
 14 occurrence....”)

15 As understood by Plaintiffs’ complaint, Plaintiffs are separate entities. Kunde is a family  
 16 owned and controlled winery producing multiple tiers of wine all crafted from grapes grown “on its  
 17 Sonoma Valley ranch.” Complaint ¶ 1. VWE is a collection of vintner family owned winery  
 18 estates and brands. Its internet home page discloses that it has “wineries throughout Napa, Sonoma,  
 19 Oregon and Washington.” See, <https://www.vintagewineestates.com>. Each Plaintiff purchased  
 20 separate policies of insurance from separate insurance carriers for different policy periods and  
 21 different limits of coverage. Kunde purchased a property policy from Allianz; VWE purchased a  
 22 marine stock throughput insurance policy from the London Insurers. The terms and conditions of  
 23 each policy are different. Compare, Dkt.1, Exh.A, Complaint and Exhibits 1 and 2 attached thereto.  
 24 Any claims presented by Plaintiffs were adjusted by different insurers. The mere assertion that  
 25 because insurers are members of a common industry and each denied a separate fire loss claim  
 26 arising out of the Sonoma wildfires for allegedly the same reason is insufficient to satisfy the  
 27 requirement that the right to relief against the Defendants arises out of the same transaction or  
 28

1 occurrence. See, *Coughlin*, 130 F.3d at 1350 (“The mere allegation, however, that all of the  
 2 plaintiffs allegedly faced similar problems is “not enough to create a common transaction or  
 3 occurrence.”); and *Wynn v. Nat'l Broad. Co.*, 234 F. Supp. 2d 1067 (C.D. Cal. 2002), in which the  
 4 district court dismissed without prejudice the claims brought by fifty former and current writers for  
 5 television programming which sued fifty separate entities in the television industry alleging age  
 6 discrimination. In concluding that the action must be dismissed and brought as separate individual  
 7 lawsuits, the district court found that (1) plaintiffs could not be joined in single action because the  
 8 factual basis for their claims were different; and (2) defendants membership in a common industry  
 9 did not warrant joinder of all defendants in single action *Id.*

10 Similarly, in *Nassau County Ass'n of Ins. Agents v. Aetna Life & Casualty Co.*, 497 F.2d  
 11 1151 (2d Cir. 1974), the Second Circuit affirmed the district court's dismissal without prejudice on  
 12 the basis of misjoinder where 164 defendant insurers allegedly terminated their relationships with  
 13 the individual insurance agent-plaintiffs. Despite the plaintiffs' allegations of identical wrongdoing  
 14 by each defendant, the court found no right to relief arising from the same transaction or occurrence  
 15 because plaintiffs had failed to demonstrate that such a right arose from the same transaction or  
 16 occurrence:

17 No allegation of conspiracy or other concert of action has been asserted. No  
 18 connection at all between the practices engaged in by each of the 164 defendants has  
 19 been alleged. Their actions as charged were separate and unrelated, with terminations  
 occurring at different times for different reasons with regard to different agents.

20 *Id.*, at 1154. See, also, *Vaz v. Met P&C Prop. & Cas. Co.*, No. 1:06 CV 481, 2006 WL 2583733, at  
 21 \*1 (S.D. Miss. Sept. 6, 2006) (“The Court concludes that the Plaintiffs should be required to file  
 22 separate complaints . . . In a superficial sense, the hurricane was a common occurrence; however,  
 23 the storm was vastly different in its effect depending on the specific geographic location of each  
 24 particular home.”). Because Plaintiffs cannot meet this first prong for joinder, the court must either  
 25 drop or sever VWE and the London Insurers from the action.

26 **B. Plaintiffs' Fail to Satisfy the Second Prong of Rule 20(a) Because the Claims Are  
 27 Based on the Actions of Different Insurers Adjusting Claims at Different  
 28 Locations for Different Insureds and Under Different Policies of Insurance.**

In addition, Plaintiffs fail to satisfy the second prong of Rule 20(a) for permissive joinder. In

1 order to satisfy this prong, Plaintiffs must show common questions of law or fact. While insurance  
 2 claims are similar contractual disputes, here, where there are different carriers whose policies  
 3 employ different language to effect that coverage, each which was placed by different insurance  
 4 brokers, one in San Francisco (Kunde) and one in Kansas City (VWE) at different times for  
 5 different policy periods and inspected by different insurers, the sheer number of variables between  
 6 and among the two Plaintiffs and the two sets of Defendants cannot state common questions of law  
 7 and fact. As the Ninth Circuit has explained, “the mere fact that all plaintiffs’ claims arise under the  
 8 same general law does not necessarily establish a common question of law or fact.” *Coughlin*, 130  
 9 F.3d at 1351. Rather, claims are not properly joined where each is based on “discrete” facts with  
 10 “different legal issues.” *Id.*

11 The Complaint demonstrates that each Plaintiff’s allegations depend upon “discrete” facts  
 12 related only to the Defendant that issued that Plaintiff insurance. The discrete facts which support  
 13 Kunde’s allegations are different from the discrete facts which support VWE’s claims. Moreover,  
 14 each Defendant has potentially different “legal theories” because the causes of action and prayers  
 15 for relief alleged in the complaint are strictly segregated between those causes of action and prayers  
 16 brought by Kunde against Allianz and those separate claims and prayers brought by VWE against  
 17 the London Insurers. Where the plaintiffs’ “claims require significant ‘individualized attention,’  
 18 they do not involve ‘common questions of law or fact.’” *Coalition for a Sustainable Delta v. U.S.*  
 19 *Fish & Wildlife Serv.*, 2009 WL 3857417, at \*7 (E.D. Cal. Nov. 17, 2009) (quoting *Coughlin*, 130  
 20 F.3d at 1351).

21 Attempted joinder of unrelated defendants based on the second prong of Rule 20(a) is  
 22 routinely rejected by district courts throughout the country. For example, in *LaFace Records. LLC v.*  
 23 *Does I-38*. No. 5:07-CV-298-BR, 2008 WL 544992 (E.D.N.C. Feb. 27, 2008), the court ordered  
 24 severance of a lawsuit against thirty-eight defendants where each defendant used the same ISP as  
 25 well as some of the same peer-to-peer (“P2P”) networks to commit the exact same alleged violation  
 26 of the law in exactly the same way against the same plaintiff. Despite these similarities, the court  
 27 found that “merely committing the same type of violation in the same way [against the same  
 28 plaintiff] does not link defendants together for purposes of joinder.” *Id.*

Nor do the allegations of a similar method for committing the alleged wrongful conduct. As discussed in *Nassau County Ass'n of Ins. Agents, Inc., v. Aetna Life & Casualty, supra*, the Second Circuit refused to allow 164 insurance companies to be joined in a single action simply because they allegedly used the same methods to cheat their insurance agents, describing that attempted joinder as “a gross abuse of procedure.” 497 F.2d at 1154.

Here, Plaintiffs cannot satisfy the second prong of Rule 20(a) because the causes of action asserted by the Plaintiffs were committed by unrelated Defendants at different times and locations, by different adjusters, under different types of insurance, requiring different proof of facts, witnesses and theories of law specific to each Defendant and Plaintiff. Such an attenuated relationship is insufficient for joinder. See, *EIT Holdings LLC v. Yelp!, Inc.*, No. 10-cv-05623-WHA, 2011 WL 2192820, at \* 1-2 (N.D. Cal. May 12, 2011) (finding misjoinder and granting severance because defendants were “unrelated companies that operate unrelated websites” and plaintiff’s claims “would require proof of facts specific to each individual defendant and to each accused website”); and *San Francisco Tech., Inc. v. Adobe Sys. Inc.*, Nos. 10-cv-01652-RS, 09-cv-6083-RS, 2010 WL 1640397, at \*1-2 (N.D. Cal. Apr. 19, 2010) (same, where defendants were “unrelated companies that market and sell wholly unrelated products” and only similarity was “alleged violations of a particular statute”).

Consequently, because cannot establish this necessary element for permissive joinder, Plaintiff VWE and the London Insurers must by dropped and/or severed from this action.

### C. Discretionary Severance is Also Warranted

Even if Plaintiffs could satisfy the requirements of Rule 20(a), which, as shown above, they cannot, severance under Rule 21 is still appropriate because permissive joinder fails to comport with the additional discretionary factors under the Rule. See, *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000) (“Even once [the permissive joinder] requirements are met, a district court must examine whether permissive joinder would ‘comport with the principles of fundamental fairness’ or would result in prejudice to either side. Under Rule 20(b), the district court may sever the trial in order to avoid prejudice.”) (internal citation omitted).

The additional factors under Rule 21 include (1) whether settlement of the claims or judicial

1 economy would be facilitated; (2) whether prejudice would be avoided if severance were granted; and  
 2 (3) whether different witnesses and documentary proof are required for the separate claims. *S.E.C. v.*  
 3 *Leslie* at \*4.

4                   **1.       Judicial Economy mandates Severance**

5                   Here, participation by Allianz in discovery, motion practice and trial unrelated to the claims  
 6 brought against it would be unnecessarily expensive. See, e.g. *Hard Drive Prods., Inc. v. Does 1-*  
 7 *188*, 809 F. Supp. 2d 1150, 1164 (N.D. Cal. 2011), disapproved on other grounds in *Williams v.*  
 8 *King*, 875 F.3d 500, (9th Cir. Cal. 2017).) Allianz expects that some, if not many of the London  
 9 Insurer fact witnesses, including underwriters and those overseeing the adjustment of VWE's claims  
 10 are located in the United Kingdom, requiring depositions there. Moreover, a consolidated trial  
 11 would force the Court to address the separate defenses that are likely to be advanced by each set of  
 12 defendants, leading to varied motion practice and creating mini-trials involving different evidence  
 13 and testimony. The evidence and testimony needed to determine whether Allianz breached the  
 14 contract with Plaintiff Kunde will be entirely different from the evidence and testimony presented  
 15 by VWE. See, e.g., *Third Degree Films, Inc. v. Does 1-131*, 280 F.R.D. 493, 498 (D. Ariz. 2012);  
 16 and *Shelton Pollet, Jr. v. Travelers Prop. Cas. Ins. Co., et. al.*, No. 01-863, 2001 WL 1471724, at  
 17 \*2 (E.D. La. Nov. 16, 2001) (rejecting plaintiff's attempt to consolidate property damage claims  
 18 arising out of a storm where it would result in mini-trials on individual issues). In such a situation,  
 19 the "[d]iscovery burdens and associated expenses" to Allianz of litigating this case with the London  
 20 Insurers "would operate expansively, absent severance" of plaintiffs' claims. *Id.* at 157.[get proper  
 21 cite]

22                   **2.       Absent Severance, the Risk of Unfair Bias, Prejudice and Error is Acute.**

23                   In deciding Rule 21 motions under the discretionary sections of Rule 21, courts recognize  
 24 that there is the real danger that a jury's consideration of one plaintiff's allegations will taint its  
 25 assessment of the other plaintiff's entirely different claims, resulting in unfair guilt by association.  
 26 *Coleman*, 232 F.3d at 1297. That potential exists here. While the claims brought by Kunde and  
 27 VWE are similar, the evidence used to determine whether either sets of insurers breached their  
 28 contracts will be based on different evidence and testimony and will inevitably lead to jury

1 confusion. On those grounds, Allianz's motion should be granted. See, *Bailey v. Northern Trust*  
 2 Co., 196 F.R.D. 513, 518 (N.D. Ill. 2000) (severing action because "[t]he jury may simply resolve  
 3 the confusion by considering all the evidence to pertain to all the plaintiffs' claims, even when it is  
 4 relevant to only one plaintiff's case"); *Grayson v. K-Mart Corp.*, 849 F. Supp. 785, 790 (N.D. Ga.  
 5 1994) (severing claims because of the "tremendous danger that one or two plaintiff's unique  
 6 circumstances could bias the jury against defendant generally, thus, prejudicing defendant with  
 7 respect to the other plaintiffs' claims").

8 As one court put it, "[e]ven if tolerably permitted by [Federal Rule of Civil Procedure]  
 9 20(a)," where joinder of defendants will prejudice defendants or create significant difficulties in  
 10 judicial administration, such concerns "far outweigh any financial saving and convenience to  
 11 plaintiff..." *Movie Sys., Inc. v. Abel*, 99 F.R.D. 129, 130 (D. Minn. 1983).

12 Finally, severance will not prejudice the parties; to the contrary, it will benefit the parties, the  
 13 Court and counsel by allowing for proper allocation of time, resources, and focus. Importantly,  
 14 severance is the only way to allow for fair and manageable discovery and trial, avoiding prejudice,  
 15 error, and confusion.

16 **V. CONCLUSION**

17 Plaintiffs' claims are misjoined and must be severed now. They arise from separate  
 18 transactions and occurrences and implicate distinct questions of fact and law. An individualized  
 19 inquiry is necessary to determine whether each Plaintiff's insurers breached its insurance contract  
 20 and whether they did so in bad faith. Such individualized claims do not meet either of the requisite  
 21 prongs for permissive joinder under Rule 20.

22 Further, joinder in this case does not serve the underlying policy of Rule 20 to promote  
 23 judicial economy, and to reduce inconvenience, delay, and added expense. Instead, this action  
 24 accomplishes the opposite — prejudice, delay, waste of time, and increased expense.

25 For all of the foregoing reasons, and in order to prevent miscarriage of justice Allianz  
 26 respectfully urges the Court grant its Motion to Sever Parties and Causes of Action.

27  
28

1 Date: October 16, 2019

MOUND COTTON WOLLAN & GREENGRASS LLP

2 By: /s/Melissa Dubbs

3 Jonathan Gross

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NATIONAL SURETY CORPORATION

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## PROOF OF SERVICE

I am a citizen of the United States and employed in the County of Alameda, City of Emeryville, California. I am over the age of eighteen years and not a party to the within action. My business address is Mound Cotton Wollan & Greengrass, 2200 Powell Street, Suite 1050, Emeryville, California 94608.

On the date below-written, I served the following document(s):

**DEFENDANT NATIONAL SURETY CORPORATION'S MOTION TO DROP (DISMISS WITHOUT PREJUDICE) OR IN THE ALTERNATIVE SEVER PLAINTIFF VINTAGE WINE ESTATES, INC. AND DEFENDANTS CERTAIN UNDERWRITERS AT LLOYD'S LONDON, RSA INSURANCE GROUP, LIBERTY SPECIALTY MARKETS INSURANCE GROUP, NAVIGATORS UNDERWRITING AGENCY LIMITED, BRIT GLOBAL SPECIALTY AND TRAVELERS MARINE CARGO ON THE GROUNDS OF MISJOINDER; [PROPOSED] ORDER**

- (BY REGULAR MAIL) I enclosed the document(s) in a sealed envelope or package addressed to the person at the address listed immediately below and placed the sealed envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the said date, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid:
  - (BY PERSONAL DELIVERY) By having a messenger personally deliver a true copy thereof to the person and/or office of the person at the address set forth below:
  - (BY OVERNIGHT DELIVERY) By placing a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to Mound Cotton Wollan & Greengrass to be delivered by Federal Express, to the address(es) shown below:
  - (BY ELECTRONIC TRANSMISSION) Based on Court Order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the person at the e-mail address listed immediately below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
  - Filed electronically with the U.S. District Court and therefore the Court's computer system has electronically delivered a copy of the foregoing document to the following person(s) at the following e-mail address(es):

**SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed on October 16, 2019, at Emeryville, California.

Kelly A. McAndrews

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